

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-218331 **DATE:** April 15, 1985  
**MATTER OF:** GM Industries, Inc.

**DIGEST:**

GAO dismisses protest against rejection of a bid as nonresponsive due to lack of technical data, even though the agency may have inadvertently misled the protester into believing that it was participating in a negotiated procurement by checking the solicitation block indicating this. Since in appropriate circumstances an agency may make award on the basis of initial proposals, an offeror that does not make its initial proposal as complete as possible runs the risk of rejection.

GM Industries, Inc. protests the rejection of its bid submitted in response to invitation for bids No. DAAK21-85-B-9351, issued by the U.S. Army Electronics Research and Development Command, Adelphi, Maryland.

We dismiss the protest.

The Army found GM's bid for a 24-inch, 5-horsepower drilling machine to be nonresponsive because of a lack of technical data. GM, however, argues that its copy of the solicitation indicated that the document was a request for proposals (RFP), not an IFB. According to GM, the Standard Form 33 in its solicitation package had block No. 4 checked, indicating that the procurement was negotiated. As a result, GM worked under the assumption that any deficiencies the Army might find in its proposal could be corrected during later discussions. GM states that it was shocked to learn that the agency considered the procurement to be formally advertised and had rejected as nonresponsive three out of the four bids received because of a lack of technical data.

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According to GM, when it questioned the Army on this result, it was informed that despite the admitted error on Standard Form 33, GM should have been alerted by the solicitation's format that this was an advertised rather than a negotiated procurement. GM argues that while it may have been clear to the organization issuing it that the solicitation in question was an IFB, this was not apparent to GM. In GM's opinion, the error requires that the Army cancel its award to the Gundersen Machinery Company and resolicit the requirement.

We do not agree. Even if we assume that various items in the procurement package (such as the standard clauses normally included in any formally advertised solicitation) did not alert GM to the true nature of this particular procurement and that the mistaken checkmark on the Standard Form 33 reasonably caused GM to conclude that it was competing for a negotiated procurement, GM is not entitled to relief. It is well established that, under a negotiated procurement, the contracting agency could make an award on the basis of initial proposals without discussions, provided that adequate competition was obtained to ensure a fair and reasonable price. R&H Rubber and Engineering, Inc., B-214299, June 5, 1984, 84-1 CPD ¶ 595; Federal Acquisition Regulation, 48 C.F.R. § 15.610(a)(6) (1984). In a negotiated procurement, an offeror that does not make its initial proposal as complete as possible runs the risk of rejection if award is made without discussions.

Thus, regardless of whether this procurement is viewed as formally advertised or as negotiated with award made on the basis of initial proposals, without discussions, GM cannot be heard to complain that it was entitled to an opportunity before award to submit data that was required to be submitted initially.

GM has not stated a valid basis for protest. Therefore, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), the protest is dismissed.

*Ronald Berger*  
Ronald Berger  
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General Counsel